

# Protection of Safety Information





# Legal vs Safety Investigations

**Legal  
Investigations:**  
**Determine  
accountability and  
culpability**

**Safety  
Investigations:**  
**Mishap  
Prevention and  
Enhance ORM**



# JAGMAN Investigations of Mishaps

- **Purpose:** To determine accountability and culpability
- **Information;**
  - Personnel who conduct a safety investigation shall NEVER conduct a JAG investigation of the same mishap (*and vice versa*).
  - JAGMAN shall be conducted independently and separately from the safety investigation.
  - Safety Investigation reports shall not be included in JAGMAN investigations.
  - JAGMAN investigators may **ONLY** have access to *factual information* (non-privileged evidence) and names of witnesses.

Chapter 1, para 8.g; G1-14, para 42.; Chapter 6, Figure 6-1, para. 2; Chapter 6, Figure 6-2, para. 3; Chapter 6, para 6001.3; Chapter 6, para 6019.3; Chapter 6, para 6020.2; Appendix A, para. 1.b; and Appendix A, para. 1.g.



# Legal vs Safety Investigations

- **Important Notes:**

- Legal investigations and safety investigations are likely to occur at the same time for a mishap.
- NCIS will investigate fatalities on a Naval / Marine Corps installation that are not disease or natural causes.
- The Office of the Judge Advocate General (OJAG) and Staff Judge Advocates (SJA) shall not;
  - be addressed on any SIREP messages or endorsements
  - be provided copies of SIREPs or endorsements
  - attend briefings regarding safety investigations.
- Safety Investigators may have access to Legal investigations.



# Protecting Safety Information

*MCO P5102.1B, Chapter 7, paragraph 7000*

***“Obtaining safety information is dependent upon protecting privileged information against use for other than safety purposes. Violations of this trust will destroy the credibility of the safety programs that have based their success on the ability to protect privileged information. “***





# Protecting Safety Information

- **Concept of Privilege:** Military and federal courts grant protection under executive privilege to the *analysis*, *conclusions* and *recommendations* of;
  - Command/Unit Safety Investigators
  - Members of a SIB
  - Safety Investigation Reports (SIREP) and Endorsements
- **Purpose:**
  - *Encourages safety Investigators and endorsers to provide open, forthright information, opinions, causes and recommendations.*
  - *Overcomes reluctance of witnesses to provide information to investigators.*



# Protecting Safety Information

- **Non-Privileged Information:** Factual information may be releasable to agencies (i.e. JAG, NCIS), or individuals outside the safety community of interest. (PII exceptions)
  - Examples
    - All factual information in Part A of the SIREP
    - Plain Photographs (Unedited / Non-staged)
    - Witness Names
    - Witness written statements and “Advice to Witness” forms (FOIA)
    - Witnesses outlines or sketches
    - Log books
    - Police reports, casualty reports, flash reports, etc.

**NOTE:** Non-privileged sources as defined by DODI 6055.07 and OPNAVINST 3750.6 (series)



# Protecting Safety Information

- **Privileged Information:**

- **All Evidence** *(Photographs, films, and videotapes that are staged, reconstructed, or simulated reenactments of possible or probable scenarios developed by or for the analysis of the safety investigator. )*
- **Safety Investigators and SIB Members**
  - *Investigator's Notes, Opinions and Summaries of witness statements*
- **Witness statements (under promises of confidentiality)**
  - Written by the witness under the “Promise of Confidentiality”.
  - Summaries of witness statements by the investigator. *(NOTE: Investigator summaries should be the ONLY written record.)*





# Protecting Safety Information

- **Privileged Information (cont):**
  - Sections of the SIREP (e.g. Part B) that includes;
    - The deliberative *analyses of findings, conclusions, and recommendations* of the SIB or command investigator.
    - All calculations and deductions the SIB or any investigator that would reveal the board's deliberative process.
  - **Endorsements of SIREPs;**
    - All endorsements are considered privileged and limited distribution.



# CMC (SD) Mishap Investigation Requirements

## Promise of Confidentiality

- **DoDI 6055.07 (06 Jun 11)**
  - *authorizes use for all services to use for Ground mishaps*
- **CMCSD message DTG 041942z Jan 12**
  - *restores for USMC ground mishaps*

See Appendix C of MCO P5102.1B

FIGURE C-1

### ADVICE TO WITNESS (PROMISE OF CONFIDENTIALITY)

THIS IS PART OF A SAFETY INVESTIGATION REPORT  
LIMITED DISTRIBUTION AND SPECIAL HANDLING REQUIRED BY  
OPNAVINST 5102.1D/MCO P5102.1B

THIS COVER SHEET AND STATEMENT ARE PRIVILEGED  
AND IS EXEMPT FROM DISCLOSURE

DONOT FILE THIS COVER SHEET IN A SYSTEM OF RECORDS SUBJECT TO THE PRIVACY ACT. FOR  
EXAMPLE, THIS STATEMENT MUST NOT BE RETRIEVABLE BY NAME, SOCIAL SECURITY NUMBER, DATE  
OF BIRTH, OR OTHER UNIQUE IDENTIFIER ASSOCIATED WITH AN INDIVIDUAL

I understand that:

- I have been requested to voluntarily provide information to a Safety Investigation Board conducting an investigation of a Navy/Marine Corps mishap.
- I AM NOT being requested to provide statement under oath or affirmation.
- Disclosure of personal information by me is voluntary; my election or refusal to provide such information will have no direct effect on me.
- The purpose of the information provided by me is to determine the cause of the mishap and/or the injury and/or damage occurring in connection with that mishap.
- All information provided by me to the Safety Investigation Board will be used ONLY for safety purposes.
- The information provided by me shall NOT be used:
  - In any determination affecting my interests.
  - As evidence to obtain evidence in determining misconduct or line of duty status of killed or injured personnel.
  - As evidence to determine my responsibility or that of other personnel from the standpoint of discipline.
  - As evidence to assert affirmative claims on behalf of the government.
  - As evidence to determine the liability of the government for property damage caused by the mishap.
  - As evidence before administrative bodies, such as Officer/Enlisted Separation Boards, Judge Advocate General Manual investigations/inquiries, Naval Aviator/Naval Flight Officer Evaluation Boards (USN) or Field Flight Performance Boards (USMC).
  - In any other punitive or administrative action taken by the Department of Navy.
  - In any other investigation or report of the mishap about which I have been asked to provide information.

All information provided by me to the Safety Investigation Board will be used ONLY for safety purposes.

1. STATEMENT

2. PRINTED NAME (First, Middle, Last)

3. SIGNATURE

4. DATE

5. RANK/RATE

6. SERVICE

7. TELEPHONE NUMBER

8. ADDRESS WHERE YOU MAY BE LOCATED

9. PRINT BOARD MEMBER'S NAME:

10. SIGNATURE



## Promise of Confidentiality

*(Uses and Limitations)*

- Can **ONLY be granted by the Sr. Member of a SIB** with the following limitations;
  - Must be explicit and cannot be implied from the investigator's status or function.
  - Must be documented in all instances in which a witness provides information pursuant to a promise of confidentiality.
  - May be given only as needed to ensure forthright cooperation of the witness concerned and may not be given on a blanket basis to all witnesses.
  - Shall be limited to the information given to a safety investigator pursuant to a promise of confidentiality.



## **Promise of Confidentiality** *(Uses and Limitations)*

- Must inform the witness that the promise of confidentiality applies only to information given to the safety investigator and not to the same information if given to others.
- May be given for aviation mishaps, friendly fire mishaps, mishaps involving complex systems and military-unique items, operations, or exercises.
- May be authorized for other mishap categories or in individual cases by the Secretary of a Military Department when the Secretary concerned determines the authorization is in the interest of national security.



# Witness Interview Key Points

- ***Witnesses shall;***

- ***NOT*** testify under oath
- ***NOT*** give a sworn statement
- ***Provide*** only personal ***OPINIONS*** and ***SPECULATIONS***

*Ref: MCO P5102.1B, Appendix A, para 2.f.*

- ***Interviewer shall;***

- Use Investigator notes as the ***ONLY*** written record (*Unit level*)
- ***NOT*** include names of witnesses in your notes
- ***NOT*** have witness sign a summary

*Ref: MCO P5102.1B, Appendix C, para 2*





# Unauthorized Uses of Privileged Information

***NOTE: Unauthorized disclosure of Safety information by military personnel is a criminal offense punishable under article 92 of the UCMJ.  
Unauthorized disclosure by civilian personnel will subject them to disciplinary action under CIVPERSINST 752.***

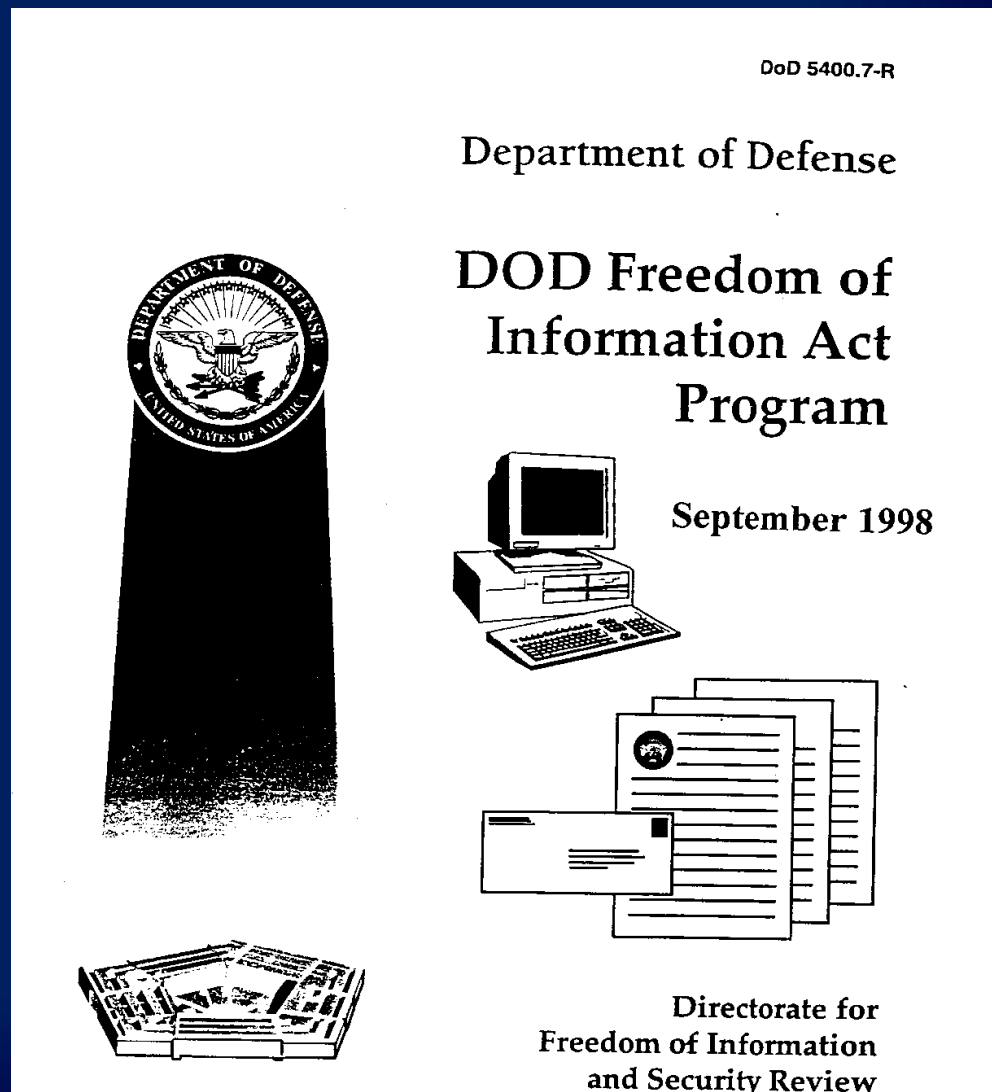
- **Privileged information Shall NOT be used:**
  - In making any determination affecting the interest of an individual.
  - As evidence to determine line-of-duty status.
  - As evidence for any punitive (disciplinary or administrative) action.
  - As evidence to determine liability of the government for property damage.
  - As evidence before administrative bodies.
  - Any other punitive or administrative action by the DON.
  - For any other investigation or report of the mishap.



# Freedom of Information Act (FOIA)

## INFORMATION ACCESS

- Public Right
- Protected Information is exempt
- **Bottom Line:** ALL request for *Safety Investigation information must be forwarded to the COMNAVSAECEN via Chain of Command.*





# CMC (SD) Mishap Investigation Requirements

## Mishap Site Jurisdiction

- **MOA (NSC – NCIS):**
  - Defines lanes.
  - Site preservation.
  - Raw / Physical evidence is shared.
  - NCIS keeps evidence if criminal activity is suspected.
  - Privileged Witness statements cannot be shared.

OPNAVINST 5102.1D  
MCO P5102.1B  
7 January 2005

### APPENDIX D

#### MEMORANDUM OF AGREEMENT BETWEEN NAVAL SAFETY CENTER AND NAVAL CRIMINAL INVESTIGATIVE SERVICE

1. Subject. The working relationship between the Naval Safety Center (NSC) and the Naval Criminal Investigative Service (NCIS).

2. Purpose. The parties recognize that both NSC and NCIS are tasked with investigating mishaps resulting in deaths, injuries and/or property damage that occur on naval installations, or involve naval aircraft or vessels. The purpose of this Agreement is to clarify the "ownership" of a mishap site and the evidence found therein; and to provide guidance for investigators from both agencies concerning the preservation of physical evidence at a mishap site and the spirit of cooperation and professionalism expected by the signatories hereto.

3. Understandings Agreements and Responsibilities.

a. The Naval Safety Center. NSC's sole purpose is to identify the cause(s) of a particular mishap in order to prevent similar accidents in the future. Any mishap that results from a criminal act is outside the purview of NSC and will not be investigated by NSC. If a suspicion of criminality is discovered in an on-going investigation, NSC shall stop investigating and deliver all non-privileged information to NCIS.

b. The Naval Criminal Investigative Service. The purpose of NCIS is to ascertain whether a criminal act contributed to a particular mishap and, if so, to identify the perpetrator and collect the evidence necessary to support disciplinary action or prosecution. If it becomes apparent that there was no criminality involved in a given mishap, NCIS shall stop investigating and deliver all information to NSC, which is not law-enforcement sensitive.



## Collecting Medical Evidence

- **Medical Records Request Letter**

- Authorizes a Competent Medical authority to obtain crucial medical information

- Medical Treatment Records
- Pathological studies

See Appendix A of MCO P5102.1B

FIGURE A-1

RELEASE OF MEDICAL RECORD INFORMATION  
SAMPLE LETTER

5102  
DATE

MEMORANDUM

From: Commander, Naval Safety Center

Subj: NAVAL SAFETY CENTER SAFETY INVESTIGATION MEDICAL RECORDS REQUEST

Ref: (a) Health Insurance Portability and Accountability Act of 1996  
(b) 45 CFR § 164.512(b)(i)  
(c) Executive Order 12196  
(d) 29 CFR § 1960  
(e) DoDI 6055.7  
(f) OPNAVINST 3750.6R  
(g) OPNAVINST 5102.1D/MCO P5102.1B  
(h) OPNAVINST 5100.19D  
(i) OPNAVINST 5100.23F

1. This letter is to be presented when requesting official medical records, normally protected from release pursuant to reference (a), from any health care provider in the conduct of an official Naval mishap investigation.
2. Reference (b) authorizes release of protected health information to a "public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling injury or disability, including, but not limited to, the reporting of injury [and] public health investigations...."
3. References (c) through (i) authorize the undersigned and his designated representatives to collect such information and investigate injuries or disability of uniformed members and civilian employees of the United States Navy and Marine Corps, as well as such other persons who may be injured by a Navy or Marine Corps activity.
4. The holder of this letter is an authorized representative of the undersigned. All medical providers are requested to cooperate fully with the investigator and provide the requested information.
5. My point of contact is LT E. Taylor George, JAGC, USNR, Flag Staff Judge Advocate, COML (757) 444-3520 extension 7047, DSN 564.

R. E. BROOKS  
Rear Admiral, U.S. Navy  
Commander, Naval Safety Center



# Criteria to stop a Safety Investigation

- **Evidence of Criminal Activity** – The GSO (*aka Unit safety Investigator*) or Sr. Member of the SIB will:
  - Stop the Safety Investigation.
  - Seek guidance.
    - SIB Senior Member will seek formal guidance from Appointing Authority and Controlling Command.
    - Unit level investigations will seek formal guidance from C.O. and higher.
  - Provide legal investigators with all Non-Privileged information /evidence
  - For SIBs - *Send all privileged information / evidence to NAVSAFECEN.*
  - For Unit Investigations – *contact NAVSAFECEN and inform them the event is a Non-mishap.*





## For assistance, call

Ground Mishap Investigations

CMC Safety Division, Naval Safety Center Detachment

Comm: (757) 444-3520,  
extensions 7147, 7161, 7170, 7173, or 7198



## Summary

- **Safety vs. Legal Investigation Boards**
- **Protecting Safety Information**
- **Freedom of Information Act (FOIA)**
- **Promise of Confidentiality**
- **Memorandum of Agreement (Safety Center and NCIS)**
- **Legal aspects of the mishap site**